

III. REMARKS

The following comments are directly responsive to the Examiner's statements in the Advisory Action mailed 3 March 2009.

The Examiner states that "the amended claim 88 is required a consideration because how a memory encoded with a software program 'it looks like 112 first.'" It is respectfully submitted that this statement is confusing and seemingly incorrect.

The Applicant presumes that the Examiner's objection concerning lack of support for the amended claim refers mainly to the designation of the claimed subject matter as "a communication device comprising a memory encoded with a software program", since the amendments to the other elements of the claim are simply formal, addressing the Examiner's earlier concerns relating to the formulation of this software-related claim. **However, a careful reading of the specification will clearly show that this is not the case.**

The Applicant respectfully submits that **explicit** support for a communication device comprising a memory encoded with a software program can be found from paragraph 0091 of the patent application as published. Paragraph [0091] is reproduced below. Specifically, paragraph 0091 discloses a communication device (lines 1 &2) comprising a memory (line 10) encoded with software (lines 10 - 12). Furthermore, when executed by a microprocessor, the software causes the communication device to perform the bit-rate determination operations characteristic of the invention (lines 22 - 25). **What better correspondence could there be with the subject matter of claim 88?**

The skilled person is well aware that the generic term "software" includes software in the form of programs.

The Examiner's assertion that an additional search might be required is respectfully traversed. Paragraph 0091 provides convincing evidence that there is support for "a communication device comprising a memory encoded with a software program." The

remaining elements of claim 88 are **identical** to those of other method and device claims (e.g. independent method claim 49 and independent apparatus claim 70), which are already considered allowable. Thus, the subject matter of the characterising steps must already have been searched and there should be no need for any further investigation.

PARAGRAPH [0091]

[0091] **The invention is implemented in a communication device mainly by means of software. FIG. 6 is a block diagram of a mobile station suitable for carrying out the invention.** The mobile station 60 comprises processing means CPU, a radio part RF and a user interface UI. The radio part RF and user interface UI are coupled to the processing means CPU. The user interface comprises a display and a keyboard to enable use of the mobile station 60. **The processing means CPU comprise a microprocessor (not shown in FIG. 6), a memory MEM and software SW. The software SW of the mobile station 60 is stored in the memory MEM, which preferably comprises both RAM, Random Access Memory, and ROM, Read Only Memory.** The microprocessor controls the operation of the mobile station 60, such as the use of the radio part, presentation of information on the user interface UI and the reading of inputs received from the user interface UI, on the basis of the software SW. The software SW comprises a WCDMA protocol stack according to which the radio part RF performs wireless transmission and reception of data blocks by means of its antenna ANT. The WCDMA protocol stack comprises a MAC Layer. Bit rate determination and maintenance of the database according to the invention are performed by the microprocessor using the software SW and memory MEM. The database according to the invention is implemented in the memory available for use by the mobile station 60. The mobile station can also comprise a microphone and a loudspeaker (not shown in FIG. 6) for receiving and re-producing a speech signal.

In conclusion, the subject matter of claim 88 **is explicitly supported by the specification and should not require further searching.** Therefore, claim 88 should be in a condition for allowance.

Furthermore, pursuant to MPEP §707.02, Applicant respectfully requests that the Supervisory Patent Examiner review this application and the current response and status. As noted in MPEP §707.02, the supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent *>Office< action with a view to finally concluding its prosecution. **"Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort >should be< made to terminate its prosecution. In order to accomplish this result, the application is to be considered "special" by the examiner."** As this application was filed in 28 December 2001, it qualifies for review by the Supervisory Patent Examiner. Such consideration is respectfully solicited.

EARLIER COMMENTS AGAIN REPRODUCED

Claim 49 is amended to address the Examiner's comments in the Advisory Action mailed 31 December 2008. It is noted that change to the claim consisted of shortening the preamble and including the elements of the preamble in the claim. This should not have altered the scope of this previously allowed claim.

Claim 70 has been corrected to recite the term "apparatus." The error is regretted.

Other amendments are also made. In the case of claims 6 and 7, which depended from claim 1, claim 7 is amended to depend from claim 6 to provide proper antecedent basis for "the WCDMA protocol stack". In the case of claims 37 and 38, which depended from independent claim 27, claim 38 is amended to depend from claim 37 to provide proper antecedent basis for "the WCDMA protocol stack". Claims 49, 70 and 85 are amended to reduce the pre-amble. It is believed that the amendments to claims 7, 38, 49, 70 and 85 do not raise any issues that would preclude their entry after the Final Rejection.

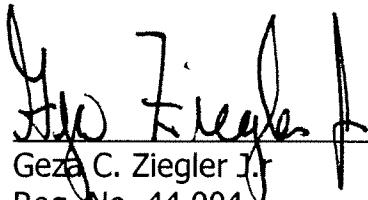
In independent claim 36, at the end of the claim, the word "first" is deleted as surplusage.

At a few other locations words were amended with changes of a linguistic nature.

For the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,


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Date

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